

# *Attainder*

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In English criminal law, **attainder** or **attinctura** was the metaphorical "stain" or "corruption of blood" which arose from being condemned for a serious capital crime (felony or treason). It entailed losing not only one's life, property and hereditary titles, but typically also the right to pass them on to one's heirs. Both men and women condemned of capital crimes could be attainted.

**Attainder by confession** resulted from a guilty plea at the bar before judges or before the coroner in sanctuary. **Attainder by verdict** resulted from conviction by jury. **Attainder by process** resulted from a legislative act outlawing a fugitive. The last form is obsolete in England (and prohibited in the United States), and the other forms have been abolished.

Attainders of English noblemen and women in the Middle Ages and Renaissance

Richard of York, attainted by Margaret of Anjou

Medieval and Renaissance English monarchs used acts of attainder to deprive nobles of their lands and often their lives. Once attainted, the descendants of the noble could no longer inherit his lands or income. Attainder

essentially amounted to the legal death of the attainted's family.<sup>[1]</sup>

Monarchs typically used attainders against political enemies and those who posed potential threats to the king's position and security. The attainder eliminated any advantage the noble would have in a court of law; nobles were exempt from many of the techniques used to try commoners, including torture. Likewise, in many cases of attainder, the king could coerce the parliament into approving the attainder and there would be a lower or non-existent burden of proof (evidence) than there would be in court.<sup>[2]</sup>

Prior to the Tudors, most rulers reversed their attainders in return for promises of loyalty. For example, Henry VI reversed all 21 attainders, Edward IV 86 of 120, and Richard III 99 of 100.<sup>[3]</sup> However, this changed with Henry VII, as described below.

Regnants who used attainder include:

- Margaret of Anjou: her attainder of Richard of York compelled him to invade England and attempt to seize the throne after the Battle of Northampton, which led to the penultimate phases of the War of the Roses.

- Edward IV of England: used attainder after killing his brother, George Plantagenet, Duke of Clarence for high treason. This allowed Richard III of England to seize the throne when he claimed that Edward IV's sons were illegitimate.
- Henry VII: initially attainted men after he ascended the throne.<sup>[3]</sup> He used the threat of attainder as a means to keep the few nobles who survived the War of the Roses in line. Often, however, he would penalize them with exorbitant fees and fines, or force them to have bonds which would be forfeit unless they exhibited good behaviour (his goal

was to reduce the number of nobles with private armies of retainers.) Henry VII attainted 138 men, of whom he reversed only 46 attainders, and some of these were conditional.

- Henry VIII: compelled parliament to attaint many nobles during his lifetime, including magnates with major land holdings, and any magnates whom he came to mistrust. Examples include:
  - Anne Boleyn: Before her execution, she was stripped of her title, and her marriage was annulled.
  - Catherine Howard: Henry VIII had an Act of Attainder passed against

Catherine Howard, which made it treason for a woman with an unchaste reputation to marry the king.<sup>[4]</sup>

- Edward Stafford, Duke of Buckingham, one of the wealthiest magnates in England, whom Henry had executed on flimsy charges in 1521.<sup>[3]</sup>
- Margaret Pole, Countess of Salisbury: One of the last surviving noble Plantagenets of senior line.
- Henry Howard, Earl of Surrey: The poet son of Thomas Howard, 3rd Duke of Norfolk.



- Thomas Cromwell: former Principle Secretary to Henry VIII, who was arrested at a Privy Council meeting in 1540, and charged with treason, executed on the grounds of an Attainder
- Charles I: subsequent to the failed impeachment of his former Lord Deputy of Ireland, Sir Thomas Wentworth, 1st Earl of Strafford, was attainted during the political crisis of 1640 -1641. The Bill of Attainder, having passed the depleted House of Commons and House of Lords, was enacted by Charles I as a concession to his political opponents. During his reign, the Long

Parliament of 1641 passed an Act of Attainder against William Laud, Archbishop of Canterbury who was beheaded in 1645.

- Charles II: Although deceased by the time of the Restoration, the regicides John Bradshaw, Oliver Cromwell, Henry Ireton and Thomas Pride were served with a Bill of Attainder on 15 May 1660 backdated to 1 January 1649 (NS).
- William III:
  - James, III and VIII, the Old Pretender, 1702<sup>[5]</sup>
- George II of Great Britain, following the Jacobite rising of 1745:

- Attainder of Earl of Kellie and others  
Act 1746

Once attainted, nobles were considered commoners, and as such, could be subjected to the same treatments, including torture and methods of execution. For example, commoners could be burned at the stake, whereas nobles could not.

Often, nobles would refer to the act of being attainted (and then executed) as the person's "destruction".

## Passage in Parliament

In the Westminster system, a bill of attainder is a bill passed by Parliament to attaint persons who are accused of high treason, or, in rare cases, a lesser crime. A person attainted need not have been convicted of treason in a court of law; in fact, the attainder process is a method of declaring a person a fugitive.

A rumour circulated that a bill of attainder against Thomas Jefferson occurred in 1774 because of his authorship of A Summary View of the Rights of British America.<sup>[6]</sup>

A bill of attainder was last passed in Britain in 1798, against Lord Edward FitzGerald. Attainders by confession, verdict and process were abolished in the United Kingdom by the Forfeiture Act 1870 (33 & 34 Vict., c.23).

Section 9 of Article One of the United States Constitution provides that no bill of attainder or ex post facto law shall be passed by Congress.<sup>[7]</sup> The following section forbids states from passing them.<sup>[8]</sup>

## Corruption of blood

**Corruption of blood** is one of the consequences of attainder. The descendants of an attainted person could not inherit either from the attainted person (whose property had been forfeited by the attainder) or from their other relatives through him. For example, if a person is executed for a crime leaving innocent children, the property of the criminal is forfeited to the crown and will not pass to the children. When the criminal's innocent father outlives his son, the property inherited by the criminal from the father cannot be inherited by the criminal's children either: it will be distributed among other family members.

The United States Constitution prohibits corruption of blood as a punishment for treason.<sup>[9]</sup> In England and Wales, corruption of blood was abolished by the Corruption of Blood Act 1814.

Examples of cases where a person's property was subject to attainder

- Earl of Strafford
- John de la Pole, 1st Earl of Lincoln
- Mervyn Tuchet, 2nd Earl of Castlehaven
- Parker Wickham
- Richard FitzAlan, 11th Earl of Arundel

- Thomas Cromwell
- Earl of Perth
- Viscount Strathallan

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